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DEC 29 2004

OFFICE OF PETITIONS

In re Application of
Warshawsky et al
Application No. 10/009,300
Filed: May 13, 2004
Attorney Docket No. Warshawsky-3

DECISION DISMISSING PETITION

This decision is in response to applicants' "Application for Patent Term Adjustment filed under 37 CFR 1.705(b)" filed August 20, 2004 requesting that the Office make an adjustment of the patent term at the time of the notice of allowance from 157 days to 317 days. The Office apologizes for any delay in handling this application.

The applicants' Application for Patent Term Adjustment is **Dismissed**. The correct term at the time of the mailing of the notice of allowance is 157 days. The Office notes that any delay in issuing the patent within four months of the payment of the issue fee will be added at the time of the issuance of the patent and will be reflected within the issue notification letter.

Applicants' assert that the patent term determination is incorrect because the Office improperly measured the amount of time accrued under 37 CFR 1.702(a)(1). Patentees assert that the Office failed to consider a preliminary amendment filed prior to the first action (notice of non-final rejection on December 17, 2003) and therefore the clock should have continued to run until the mailing of the notice of allowance on May 25, 2004.

The applicants' arguments are not persuasive. The Office maintains that the non-final rejection mailed on December 17, 2003 is considered an action within the meaning of 35 U.S.C. 132 and therefore the clock properly stopped on December 17, 2003 (on hundred and fifty seven days) after the date of the requirements of 35 U.S.C. 371 were fulfilled.. Although the initial non-final rejection did not address claims 25-33 which were added by preliminary amendment, the mailed office action was sufficient to meet the requirements of 35 U.S.C. 132. The Office notes that the action included a request for further information under 37 CFR 1.105 which the Office has deemed sufficient by itself to be considered an action under 35 U.S.C. 132.

The \$200.00 applicant fee has been assessed to this application and no additional fees are required by the Office.

The Office has forwarded this application to the Office of Patent Publication for a prompt issuance of the patent. The Office apologizes for any delay that this application may have caused in the issuance of the patent.

Any additional questions should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration at 571-272-7757.

Kerry A. Ferriter
for

Karin Ferriter
Senior Legal Advisor
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For Patent Examinationn Policy